

**ELECTRONIC HEALTH RECORDS SYSTEM  
COR20-0259N**

**THIS CONTRACT** is entered into by and between the State of Montana, **Montana Department of Corrections**, (State), whose address and phone number are P.O. Box 201301, 5 S. Last Chance Gulch, Helena, MT 59620-1301, (406) 444-3930, and **NaphCare, Inc.**, (Contractor), whose address and phone number are 2090 Columbiana Road, Ste 4000, Birmingham, AL 35216, (205) 536-8400.

**1. EFFECTIVE DATE, DURATION, AND RENEWAL**

**1.1 Contract Term.** The Contract's initial term (Term) is upon contract execution, through March 31, 2025, unless terminated earlier as provided in this Contract. In no event is this Contract binding on State unless State's authorized representative has signed it. The legal counsel signature approving legal content of the Contract and the procurement officer signature approving the form of the Contract do not constitute an authorized signature.

**1.2 Contract Renewal.** State may renew this Contract under its then-existing terms and conditions in one (1) year intervals, or any interval that is advantageous to State. This Contract, including any renewals, may not exceed a total of ten (10) years.

**2. SERVICES, LICENSE, FACILITIES AND DEFINITIONS**

**2.1 Services.** Contractor shall provide the State a fully functional Electronic Health Records System (hereinafter referred to as "EHR", "System", "Application" or collectively "EHR System"). This includes data migration from existing lab and pharmacy systems and implementation of EHR including, but not limited to: project management, business transformation management, systems analysis and design, development, testing, training, implementation, integration/interfacing of other systems, hosting, stabilization, transition, operation and maintenance, and enhancement. Training of and knowledge transfer to the Montana Department of Corrections (MDOC) staff is required throughout the system implementation and operation. The system shall include functionality which allows the State to implement an integrated healthcare model at all secure care facilities with the specifications established in RFP# COR-RFP-2020-0259N issued May 18, 2020, as further described in Contractor's response to RFP# COR-RFP-2020-0259N dated July 24, 2020, and as otherwise set forth within this Contract.

**2.2 License.** Subject to terms and conditions of this Contract, Contractor grants to State a non-exclusive, non-transferable (except as otherwise provided herein) license during the Term (i) for use of the Licensed Materials and Third Party Products by Authorized Users in the course of providing, or related to the provision of, healthcare services to Patients, (ii) for access to and use of the System by Authorized Users in the course of providing, or related to the provision of, healthcare services to Patients, (iii) for access to and use of the Services (as defined below) by Authorized Users for purposes of System implementation, operation, maintenance, and support, and (iv) for copying and use of the Documentation by Authorized Users in furtherance of the foregoing.

Contractor shall perform such other services as may be set forth in a Statement of Work executed by the parties concurrent with the execution of this Contract or within any Amendment executed thereafter. Unless otherwise set forth in such Statement of Work or Amendment, all such other services shall be billed at Contractor's rates as defined herein.

**2.3 Facilities.** This Contract covers the Licensed Sites specified herein. Should State request that additional Licensed Sites be added to this Contract for access to and use of the System and Services, the parties will amend this Contract and Contractor will incorporate new Licensed Sites at the then current rates for implementation and maintenance and support of the System and Services.

**2.3.1 Facility and Administrative Locations.**

**2.3.1.1. MT Department of Corrections, Central Office.**

Address: 5 South Last Chance Gulch, Helena, MT 59620-1301

**2.3.1.2. Montana State Prison (MSP).**

Address: 400 Conley Lake Rd, Deer Lodge, MT 59722

**2.3.1.2. Riverside Special Needs Unit.**

Address: 2 Riverside Rd, Boulder, MT 59632

**2.3.1.3. Montana Women's Prison (MWP).**

Address: 701 South 27<sup>th</sup> St., Billings, MT 59101

**2.3.1.4. Pine Hills Correctional Facility (PHCF).**

Address: 4 North Haynes Ave, Miles City, MT 59301

**2.4 Definitions.** Unless otherwise defined herein, capitalized terms used in this Agreement shall have the following definitions.

- a) "Affiliate" means, as to a party, any other entity that directly or indirectly controls, is under common control with, or is controlled by, such party; as used in this definition, "control" and its derivatives mean possession, directly or indirectly, of power to direct the management or policies of an entity. For clarification and avoidance of doubt, in the case of State, Affiliate shall mean any entity that has a formal or informal relationship with State.
- b) "Application" means the current version of the EHR Software offered by Contractor in object/executable (and/or encrypted source code) form only, and any associated database structures and queries, interfaces, data conversion software, tools, and the like, together with any and all Updates thereof, as may be licensed by Contractor to State pursuant to this Contract. For clarification and avoidance of doubt, the Application shall include all customizations and Feature Requests developed by Contractor for State. For the purposes of this definition, "current version" means the current Production version as well as any new Update of the Production version that has been released but is not yet installed.
- c) "Application Error" means an error or defect in the Application Software which requires correction by Contractor.
- d) "Available" means that the Application is available and functioning correctly for use in accordance with the warranties and Service Level Agreements (SLA).
- e) "Authorized User" means any individual, whether on-site at a Licensed Site or at a remote location, who is (a) a State employee, including temporary employees or contract employees (b) a physician or other medical professional authorized to perform services at a State facility or Licensed Site, or (c) an employee of such physicians and medical professionals, in each case as duly authorized by State to access the System.
- f) "BAA" means, a business associate agreement executed by the parties in compliance with HIPAA,

attached hereto as Exhibit A.

- g) “Concept” means (i) any method, process, procedure, know-how, and the like utilized by Contractor in performing its obligations under this Contract or otherwise and related to the Licensed Materials or the Services that is used, held, or acquired for use by Contractor in the course of its business and (ii) any finding, invention, improvement, discovery, or idea of Contractor, either alone or jointly with State or a third party, whether or not patentable, and related to the Licensed Materials or the Services that is conceived or reduced to practice during the Term.
- h) “Confidential Information” means any information of any type in any form that (i) is disclosed to or observed or obtained by one party from the other party (or from a person the recipient knows or reasonably should assume has an obligation of confidence to the other party) in the course of, or by virtue of, this Contract and (ii) either is designated as confidential or proprietary in writing at the time of such disclosure or within a reasonable time thereafter (or, if disclosure is made orally or by observation, is designated as confidential or proprietary orally by the person disclosing or allowing observation of the information) or is of a nature that the recipient knew or reasonably should have known, under the circumstances, would be regarded by the owner of the information as confidential or proprietary. Without limiting any other provisions of this Contract, and whether or not otherwise meeting the criteria described herein, the Application shall be deemed conclusively to be Confidential Information. For purposes of this Contract, however, the term “Confidential Information” specifically shall not include any portion of the foregoing that (i) was in the recipient’s possession or knowledge at the time of disclosure and that was not acquired directly or indirectly from the other party, (ii) was disclosed to the recipient by a third party not having an obligation of confidence of the information which the recipient knew or which, under the circumstances, the recipient reasonably should have assumed to exist, (iii) is or, other than by the act or omission of the recipient, becomes a part of the public domain not under seal by a court of competent jurisdiction, or (iv) is independently developed by a party without reference to or use of the other party’s Confidential Information, and the term “Confidential Information” specifically shall not include protected health information (as defined under HIPAA), because such information is subject to the provisions of the BAA. No combination of information will be deemed to be within any of the foregoing exceptions, regardless whether the component parts of the combination are within one or more exceptions. In the event of any ambiguity as to whether information is Confidential Information, the foregoing shall be interpreted strictly and there shall be a rebuttable presumption that such information is Confidential Information. For clarification and avoidance of doubt, State Confidential Information shall include all confidential information related to State.
- i) “DDI” means Design, Development, and Implementation.
- j) “State Data” means (i) all data entered, collected, stored, processed, or generated through State’s use of the Application, or (ii) entered into the Application by or on behalf of State pursuant to a conversion of data from another system, in either case as such data is maintained in the Application from time to time. State Data includes all Protected Health Information (“PHI”) as such term is defined by HIPAA.
- k) “Deliverables” mean the specific Deliverables set forth in RFP# COR-RFP-2020-0259N issued May 18, 2020 and Exhibits B & C.
- l) “Documentation” means all documentation (whether printed or in an electronic retrieval format) supplied to State by Contractor for use with or in support of the Application, including descriptions of how to configure and use the features and functions of the Application, and any and all Updates thereof as may be supplied by Contractor to State during the Term. Documentation shall also include the Functional Specifications.
- m) “EHR” means Electronic Health Record.
- n) “Excusable Outage” means unavailability (i) during Scheduled Maintenance, or (ii) caused by or resulting from negligent or intentional acts or omissions of State, its Affiliates, an Authorized User,

their respective employees, agents, contractors, or vendors, or any other party gaining access to the Application due to any such negligent act or omission, or (iii) arising from State's direction that Contractor cease making the Application Available for use other than in the event of a material breach of the Contract by Contractor, or (iv) caused by outages of State's LAN, or (v) caused by outages of Network Connectivity not provided by Contractor, or (vi) caused by outages of individual end-user devices (e.g., workstations, printers, and peripheral devices).

- o) "Functional Specifications" means (i) the specifications describing features and functions of the Application as set forth in RFP# COR-RFP-2020-0259N issued May 18, 2020 as further described in Contractor's response to RFP# COR-RFP-2020-0259N dated July 24, and, (ii) any mutually agreed upon specifications for customizations, interfaces, data imports/conversions, Feature Requests, and other deliverables related to the Application that are attached to this Contract, a Statement of Work, Amendment, or are subsequently agreed upon by the parties.
- p) "HIPAA" means, collectively, the Health Insurance Portability and Accountability Act of 1996, the Health Information Technology for Economic and Clinical Health Act (commonly referred to as the "HITECH Act"), and the regulations promulgated under the foregoing from time to time by the United States Department of Health and Human Services, each as amended from time to time.
- q) "Hosting Services" means (i) the provision, administration, and maintenance of servers, related equipment, and infrastructure software (e.g., operating system, database, and utility software) (ii) the provision of bandwidth from the hosting facility to the State's WAN, and (ii) the operation of the Application for access and use by State. Contractor's responsibilities associated with providing the Hosting Services are further described in Exhibit B.
- r) "LAN" refers to State's Local Area Network, specifically the interconnection via IP communication of computers within a single physical location (i.e., Licensed Site).
- s) "Licensed Materials" means the Application and the Documentation.
- t) "Licensed Site" means the primary and secondary locations (facilities) set forth in Section 2.3.
- u) "Malfunction" means a material failure of the System, when operated in accordance with the Documentation, to provide the functionality described in the Documentation or to perform in conformance with any standards and specifications expressly stated therein. A Malfunction may or may not be caused by an Application Error.
- v) "Minor Deviations" means those adjustments to the tasks or resources required of Contractor or to the date on which Services are to be performed or a Deliverable is scheduled to be delivered and/or Accepted which do not (i) alter or eliminate any specifications, Deliverables or training; (ii) change the period of time State is given to review any Deliverable or training; (iii) result in Contractor deviating from the deadlines for milestones (earlier or later); or (iv) require any greater resources from the State than those identified in the Project Plan that has been accepted by State.
- w) "Network Connectivity" means connectivity of two (2) or more computing resources via Internet Protocol communication technology.
- x) "Patient" means a person incarcerated in or otherwise confined to a penal or correctional facility, jail, reformatory, detention center, MCE Work Center or residential community program center operated by, or under contract to, the United States, a State, a territory, a political subdivision of a State or territory, or an Indian tribe, for the confinement or rehabilitation of persons charged with or convicted of a criminal offense or other persons held in lawful custody, including juvenile offenders adjudicated delinquent, aliens detained awaiting deportation, persons committed to mental institutions through the criminal justice system, witnesses, or others awaiting charges or trial. For clarification and avoidance of doubt, all Patients will be State prisoners.
- y) "Private Connection" means Network Connectivity between geographically separate locations by way of a third-party telecommunication provider in which the communication is segmented from Internet traffic.

- z) "Problem Report" means a written report delivered to Contractor by State describing in reasonable detail a suspected Malfunction or deficiency of a Deliverable.
- aa) "Project Plan" means the schedule of activities, tasks, events, Deliverables, milestones, and responsibilities of both parties for the implementation of the Application. At a minimum, the Project Plan will address the configuration and customization of Application, State's testing of the Application, the training of Authorized Users, and the activation of the Application in a production environment.
- bb) "Software" means (i) the proprietary computer program(s) wholly owned by Contractor that comprise a series of instructions, rules, routines, or statements, regardless of the media in which recorded, that allow or cause a computer to perform a specific operation or series of operations; and (ii) recorded information comprising source code listings, design details, algorithms, processes, flow charts, formulas, and related material that would enable the computer program to be produced, created, or compiled.
- cc) "Scheduled Maintenance" means System downtime associated with or caused by (i) maintenance, upgrades, or replacement of infrastructure, hardware, software, or telecommunications services provided as part of the Hosting Services; or (ii) maintenance or Updates to the Application, but only if the foregoing occurs between 12:00 a.m. (midnight) and 4:00 a.m. Eastern Time (Monday-Sunday), but not more than once in any calendar month. Schedule Maintenance shall also include System downtime for which Contractor has notified State at least twenty-four (24) hours in advance and State has consented to such downtime.
- dd) "Statement of Work" means an addendum to this Contract duly executed by each party that sets forth requirements, pricing, acceptance methodology, fees, and other respective responsibilities of the parties as to implementation, interface development, customization and other Services to be provided by Contractor to State pursuant to this Contract; provided, however, that the failure of a Statement of Work to comply with the foregoing standards shall not, in itself, invalidate such Statement of Work.
- ee) "Subject Matter Experts" means those State personnel with sufficient training or job function that qualifies them to be an authority with respect to a specific workflow or operation.
- ff) "System" means the combination of (i) the Application; (ii) any third party software or content that is licensed by Contractor for use in conjunction with the Application, specifically including the Third-Party Products, and (iii) the equipment and software that comprise the Hosting Services, as may be supplied by Contractor to State pursuant to this Contract.
- gg) "TechCare" (or "TechCare®") means the proprietary software system owned by Contractor and the name assigned to the Application or System, as applicable, by Contractor.
- hh) "Third-Party Products" means the third-party software and applicable content identified herein.
- ii) "Update" means all corrections, changes, and improvements to the Application, regardless of the term used by Contractor to describe such changes (e.g., updates, upgrades, enhancements, versions, releases, etc.). Updates shall not materially diminish any functionality available in the then-current release of the Application.
- jj) "Including" means "including without limitation" unless otherwise expressly provided in a given instance.
- kk) "WAN" means Wide Area Network, specifically the interconnection via IP communication of physically separate locations.

### **3. WARRANTIES**

**3.1 Warranty for Services.** Contractor warrants that it performs all services in accordance with generally accepted professional standards of care in the industry and skill and according to Contractor's response, current description (including any completion criteria) contained in this Contract. State agrees to

provide timely written notice of any failure to comply with this warranty so that Contractor can take corrective action.

**3.2 Warranty for Software.** For a period of one-hundred eighty (180) days from the date of final acceptance of software, Contractor warrants that: (i) the software will provide the features and functions and will otherwise conform to all published documentation including on Contractor's website; and (ii) the media upon which the software is furnished will be free from defects in materials and workmanship under normal use and service.

The parties agree that the warranties set forth above do not require uninterrupted or error-free operation of hardware or services unless otherwise stated in the specifications. Upon receipt of written notice from State that the Application fails to meet this warranty, Contractor shall provide Maintenance and Support Services in accordance with the terms of the Contract. State's primary remedy for breach of a performance warranty shall be the prompt and efficient correction or replacement of the defective Application. If the primary remedy fails in its essential purpose, such failure shall be deemed a material breach of the Contract for which State may pursue any other remedy permitted under the Contract, at law or in equity.

**3.3 REPRESENTATION AND WARRANTY DISCLAIMERS.** THE EXPRESS WARRANTIES AND EXPRESS REPRESENTATIONS OF CONTRACTOR SET FORTH IN THIS CONTRACT ARE IN LIEU OF, AND CONTRACTOR DISCLAIMS, ANY AND ALL OTHER WARRANTIES, CONDITIONS, OR REPRESENTATIONS (EXPRESS OR IMPLIED, ORAL OR WRITTEN), WITH RESPECT TO THE LICENSED MATERIALS OR ANY PART THEREOF, INCLUDING MERCHANTABILITY, OR FITNESS OR SUITABILITY FOR ANY PURPOSE (WHETHER OR NOT CONTRACTOR KNOWS, HAS REASON TO KNOW, HAS BEEN ADVISED, OR OTHERWISE IS IN FACT AWARE OF ANY SUCH PURPOSE), WHETHER ALLEGED TO ARISE BY LAW, BY REASON OF CUSTOM OR USAGE IN THE TRADE, BY COURSE OF DEALING, OR OTHERWISE. CONTRACTOR EXPRESSLY DISCLAIMS ANY WARRANTY OR REPRESENTATION TO ANY PERSON OTHER THAN STATE WITH RESPECT TO THE LICENSED MATERIALS OR ANY PART THEREOF.

**3.4 Responsibility for Medical Use.** State shall communicate to each Authorized User that the Application is a support tool only and expressly is not to be relied upon as a sole source of information in connection with medical advice or the provision of medical services.

**3.5 Intent of Software.** State acknowledges and understands that the Application is being used for an intended purpose and goal, specifically to facilitate the delivery and administration of healthcare services; however, State further acknowledges and understands that Contractor cannot and does not guarantee that such intended purpose and goal will be completely met by the Application and that other methods and services currently in place or contemplated to be put into place must also work independently and in tandem to achieve success.

**3.6 Other Disclaimers.** State will be exclusively responsible as between the parties for, and Contractor makes no representation or warranty with respect to, determining whether the Licensed Materials will achieve the results desired by State, ensuring the accuracy of any State Data entered by State, or selecting, procuring, installing, operating, and maintaining State's internal technical infrastructure for State's access to and use of the Licensed Materials. Contractor shall not be liable for, and shall have no obligations with respect to, (i) any aspect of the Licensed Materials that is modified by any person other than Contractor or its contractors, (ii) use of the Licensed Materials other than in accordance with the most current operating instructions provided by Contractor, (iii) malfunctions or failures caused by defects, problems, or failures of software or hardware not

provided by Contractor, or (iv) malfunctions or failures caused by acts or omissions of State or any third party not affiliated with Contractor. State acknowledges that the operation of the Licensed Materials will not be error free in all circumstances, that not all immaterial defects in the Licensed Materials may be corrected, and that the operation of the Licensed Materials may be interrupted by reason of defect therein or by reason of fault on the part of Contractor; provided, however, that such interruptions may be subject to the Hosting SLA's.

#### **4. CONSIDERATION/PAYMENT**

**4.1 Payment Schedule.** In consideration of the EHR System to be provided, State shall pay Contractor according to the following schedule:

##### **4.1.1 DDI Milestones and Cost of Operations Payments.**

<b>Phase</b>	<b>Details</b>	<b>Cost</b>
<b>1. Planning/Analysis/Requirements Validation</b>	Contractor Delivery of: <ul style="list-style-type: none"> <li>• Project Plan</li> <li>• Software Requirements Document</li> <li>• Interface Requirements Document</li> <li>• Hosting Design Document</li> <li>• Data Migration Plan</li> </ul>	<b>\$70,000.00</b>
<b>2. Configure/Develop/Build/Integrate System</b>	Contractor Delivery of: <ul style="list-style-type: none"> <li>• Tailored EHR System based on Approved Requirements</li> <li>• Available Interface Integrations</li> <li>• Hosted Test Environment</li> </ul>	<b>\$95,000.00</b>
<b>3. Data Conversion/Migration</b>	Contractor Delivery of: <ul style="list-style-type: none"> <li>• Migrated Data available from current electronic systems</li> <li>• Scheduled ongoing data migration imports through GoLive</li> </ul>	<b>\$95,000.00</b>
<b>4. User Acceptance Testing</b>	<ul style="list-style-type: none"> <li>• State Acceptance of Hosted Production Environment</li> <li>• Tailored EHR System based on Approved Requirements</li> <li>• State Specific Documentation</li> </ul>	<b>\$90,000.00</b>
<b>5. End User Training &amp; GoLive</b>	Contractor Delivery of: <ul style="list-style-type: none"> <li>• GoLive of Software at Facilities</li> <li>• Pre and Go-Live Training</li> <li>• Post-Live Support</li> <li>• Sign Off Deliverables</li> </ul>	<b>\$100,000.00</b>
<b>TOTAL DDI:</b>		<b>\$450,000.00</b>

<b>COST OF OPERATIONS</b>	
<b>Phase</b>	<b>Cost</b>
Operations Year 1	\$150,000.00
Operations Year 2	\$150,000.00

Operations Year 3	\$150,000.00
Operations Year 4	\$162,000.00
<b>Operations Total Initial Contract Term of Four (4) Years:</b>	<b>\$612,000.00</b>
Optional Years of Renewal:	
Operations Year 5 Renewal	\$162,000.00
Operations Year 6 Renewal	\$174,000.00
Operations Year 7 Renewal	\$174,000.00
Operations Year 8 Renewal	\$174,000.00
Operations Year 9 Renewal	\$174,000.00
Operations Year 10 Renewal	\$174,000.00
<b>Operations Total Cost Optional Years of Renewal:</b>	<b>\$1,032,000.00</b>
<b>Total Cost of Operations Full Term of Contract:</b>	<b>\$1,644,000.00</b>

<b>COST SUMMARY</b>	
<b>Phase</b>	<b>Total Cost</b>
EHR Scope of Work DDI Total Costs	\$450,000.00
EHR Operations Total Costs	\$1,644,000.00
<b>All Inclusive EHR Total Costs:</b>	<b>\$2,094,000.00</b>

**4.1.2 Schedule.** Invoices for DDI Phase Completion will be provided within 15 days of Contractor's Delivery of the products or services defined above. Invoices for Operations will be invoiced annually, in advance, based on the GoLive date.

**4.1.3 Post Go Live Software Enhancement Costs.** As defined in Exhibit B.1.3 of this Contract, certain change requests to the application fall outside of Operations and will be billed at an hourly rate of \$180. Contractor shall invoice and State shall pay the hourly fee for approved enhancement requests as they are developed. Invoices for such services shall be provided on the first day of the first calendar quarter following GoLive and quarterly thereafter. Each invoice shall reflect the hours utilized and the associated enhancement developed.

**4.2 Invoices.** Invoices must clearly show services performed by date including work performed pursuant to change orders.

**4.3 Withholding of Payment.** State may withhold disputed payments to Contractor under the subject statement of work (or where no statement of work exists, the applicable contract). The withholding may not be greater than, in the aggregate, fifteen percent (15%) of the total value of the subject statement of work or applicable contract. With respect to payments subject to milestone acceptance criteria, State may withhold payment only for such specific milestone if and until the subject milestone criteria are met. Contractor is not relieved of its performance obligation if such payment(s) is withheld. The parties hereby agree that Contractor shall not be held responsible and payment shall not be withheld pursuant to any delay, noncooperation, nonperformance, inability, or noncompliance of the State, or third-party vendors utilized by the State, as it relates

to services and features Contractor agrees to provide pursuant to this Contract and as further set forth in Section 24.4 herein.

**4.4 Payment Terms.** Unless otherwise noted in the solicitation document, State has thirty (30) days to pay accurate and timely invoices, as allowed by § 17-8-242, MCA. Contractor shall provide banking information at the time of Contract execution in order to facilitate State's electronic funds transfer payments.

**4.5 Reference to Contract.** The Contract number MUST appear on all invoices, packing lists, packages, and correspondence pertaining to the Contract. If the number is not provided, State is not obligated to timely pay the invoice.

## **5. ACCESS AND RETENTION OF RECORDS**

**5.1 Access to Records.** Contractor shall provide State, Legislative Auditor, or their authorized agents access to any records necessary to determine Contract compliance. State may terminate this Contract under Section 17, Contract Termination, without incurring liability, for Contractor's refusal to allow access as required by this Section. (§ 18-1-118, MCA.) Offender's protected health information (PHI) shall not be made accessible to Legislative Auditor Division without a HIPAA-compliant release and if applicable a 42 CFR Part-2 compliant release signed by the offender.

**5.2 Medical Records Ownership Rights.** The protected health information migrated and/or integrated into the EHR system developed by Contractor, is owned exclusively by the State and is accessible to Contractor only for the limited purpose of system development and only for a limited time until final acceptance of the EHR by the State. Contractor may not retain or disclose any protected health information to which it has been granted limited access under this provision, to anyone at any time.

**5.3 Retention Period.** Contractor shall create and retain all records supporting the Electronic Health Care Records for a period of eight years after either the completion date of this Contract or termination of the Contract.

## **6. ASSIGNMENT, TRANSFER, AND SUBCONTRACTING**

Contractor may not assign, transfer, or subcontract any portion of this Contract without State's prior written consent. (§ 18-4-141, MCA) Contractor is responsible to State for the acts and omissions of all subcontractors or agents and of persons directly or indirectly employed by such subcontractors, and for the acts and omissions of persons employed directly by Contractor. No contractual relationships exist between any subcontractor and State under this Contract.

## **7. DEFENSE, INDEMNIFICATION / HOLD HARMLESS**

Contractor shall protect, defend, indemnify, and save harmless the State, its elected and appointed officials, agents, and employees, while acting within the scope of their duties as such, from and against all claims, liabilities, demands, causes of action, judgments, and losses, including all costs of defense and reasonable attorney fees, arising in favor of or asserted by Contractor's employees and agents, its subcontractors, its subcontractor's employees and agents, or third parties on account of property damage, personal injury, bodily injury, death, or financial or other loss of any kind that in any way, directly or indirectly, arise or allegedly arise out of or in connection with this Contract, except for claims, liabilities, demands, causes of action, judgments, and losses arising from the State's sole negligence.

Contractor waives all claims, demands, causes of action, and recourse against the State, including claims of contribution or indemnity, arising in favor of Contractor on account of property damage, personal injury, bodily injury, death, or financial or other loss of any kind that in any way, directly or indirectly, arise or allegedly arise out of or in connection with this Contract.

## **8. REQUIRED INSURANCE**

**8.1 General Requirements.** Contractor shall maintain for the duration of this Contract, at its cost and expense, insurance against claims for injuries to persons or damages to property, including contractual liability, which may arise from or in connection with the performance of the work by Contractor, agents, employees, representatives, assigns, or subcontractors. This insurance shall cover such claims as may be caused by any negligent act or omission.

**8.2 Primary Insurance.** Contractor's insurance coverage shall be primary insurance with respect to State, its officers, officials, employees, and volunteers. Any insurance or self-insurance reserves maintained by State, its officers, officials, employees, or volunteers shall be in excess of Contractor's insurance and shall not contribute with it.

**8.3 Specific Requirements for Commercial General Liability.** Contractor shall purchase and maintain occurrence coverage with combined single limits for bodily injury, personal injury, and property damage of \$1,000,000 per occurrence and \$2,000,000 aggregate per year to cover such claims as may be caused by any act, omission, or negligence of Contractor or its officers, agents, representatives, assigns, or subcontractors.

State, its officers, officials, employees, and volunteers are to be covered and listed as additional insureds for liability arising out of activities performed by or on behalf of Contractor, including the insured's general supervision of Contractor, products, and completed operations, and the premises owned, leased, occupied, or used.

**8.4 Specific Requirements for Automobile Liability.** Contractor shall purchase and maintain coverage with split limits of \$500,000 per person (personal injury), \$1,000,000 per accident occurrence (personal injury), and \$100,000 per accident occurrence (property damage), OR combined single limits of \$1,000,000 per occurrence to cover such claims as may be caused by any act, omission, or negligence of Contractor or its officers, agents, representatives, assigns, or subcontractors.

State, its officers, officials, employees, and volunteers are to be covered and listed as additional insureds for automobiles leased, owned, or borrowed by Contractor.

**8.5 Deductibles and Self-Insured Retentions.** Any deductible or self-insured retention must be declared to and approved by State. At the request of State either: (1) the insurer shall reduce or eliminate such deductibles or self-insured retentions as respects State, its officers, officials, employees, or volunteers; or (2) at the expense of Contractor, Contractor shall procure a bond guaranteeing payment of losses and related investigations, claims administration, and defense expenses.

**8.6 Certificate of Insurance/Endorsements.** A certificate of insurance from an insurer with a Best's rating of no less than A- indicating compliance with the required coverages has been received by State Procurement Bureau, P.O. Box 200135, Helena, MT 59620-0135. *The certificates must name the State of*

*Montana as certificate holder and Contractor shall provide copies of additional insured endorsements required by Contractor's commercial general liability and automobile liability policies. Contractor must notify State immediately of any material change in insurance coverage, such as changes in limits, coverages, change in status of policy, etc. State reserves the right to require complete copies of insurance policies at all times.*

**8.7 Specific Requirements for Cyber/Data Information Security Insurance.** The Contractor shall purchase and maintain cyber/information security insurance coverage with combined single limits for each wrongful act of \$5,000,000 per occurrence to cover the unauthorized acquisition of personal information such as social security numbers, credit card numbers, financial account information, or other information that uniquely identifies an individual and may be of a sensitive nature in accordance with § 2-6-1501, MCA through § 2-6-1503, MCA. If the Contractor maintains higher limits than the minimums shown above, the State requires and shall be entitled to coverage for the higher limits maintained by the Contractor. Any available insurance proceeds in excess of the specified minimum limits of insurance and coverage shall be available to the State. Such insurance must cover, at a minimum, privacy notification costs, credit monitoring, forensics investigations, legal fees/costs, regulatory fines and penalties, and third party liability settlements or judgments as may be caused by any act, omission, or negligence of the Contractor's officers, agents, representatives, assigns or subcontractors. Note: If occurrence coverage is unavailable or cost-prohibitive, the State will accept 'claims made' coverage provided the following conditions are met: 1) the retroactive date must be shown, and must be before the date of the contract or the beginning of contract work; 2) insurance must be maintained and evidence of insurance must be provided for at least three (3) years after completion of the contract of work; and 3) if coverage is canceled or non-renewed, and not replaced with another claims-made policy form with a retroactive date prior to the contract effective date, the Contractor must purchase "extended reporting" coverage for a minimum of three (3) years after completion of work.

## **9. COMPLIANCE WITH WORKERS' COMPENSATION ACT**

Contractor shall comply with the provisions of the Montana Workers' Compensation Act while performing work for State of Montana in accordance with §§ 39-71-401, 39-71-405, and 39-71-417, MCA. Proof of compliance must be in the form of workers' compensation insurance, an independent contractor's exemption, or documentation of corporate officer status. Neither Contractor nor its employees are State employees. This insurance/exemption must be valid for the entire Contract term and any renewal. Upon expiration, a renewal document must be sent to State Procurement Bureau, P.O. Box 200135, Helena, MT 59620-0135.

## **10. COMPLIANCE WITH LAWS**

Contractor shall, in performance of work under this Contract, fully comply with all applicable federal, state, or local laws, rules, regulations, and executive orders including but not limited to, the Montana Human Rights Act, the Equal Pay Act of 1963, the Civil Rights Act of 1964, the Age Discrimination Act of 1975, the Americans with Disabilities Act of 1990, and Section 504 of the Rehabilitation Act of 1973. Contractor is the employer for the purpose of providing healthcare benefits and paying any applicable penalties, fees and taxes under the Patient Protection and Affordable Care Act 42 U.S.C. § 18001 et seq. Contractor will comply with the Prison Rape Elimination Act 34 U.S.C. § 30301 et seq., the Prison Rape Elimination Act final rule 28 CFR Part 115, MDOC Policy 1.1.17, Prison Rape Elimination Act, and ACCD 1.3.1400 PREA to include incident reporting. State has a zero-tolerance policy as to incidents of sexual assault/rape or sexual misconduct in its correctional facilities or premises. Contractor is referred to § 45-5-501 MCA. Any subletting or subcontracting by Contractor subjects subcontractors to the same provisions. In accordance with § 49-3-207, MCA, and State of Montana Executive Order No. 04-2016, Contractor agrees that the hiring of persons to perform this Contract will be made on the basis of merit and qualifications and there will be no discrimination based on race, color,

sex, pregnancy, childbirth or medical conditions related to pregnancy or childbirth, political or religious affiliation or ideas, culture, creed, social origin or condition, genetic information, sexual orientation, gender identity or expression, national origin, ancestry, age, disability, military service or veteran status, or marital status by the persons performing this Contract.

**10.1 Affordable Care Act.** The Affordable Care Act requires a Contractor, if Contractor is an applicable large employer under the ACA, to provide healthcare coverage for its employees who provide services for the State and work for 30 or more hours per week. This coverage must also cover the eligible employee's dependents under the age of 26. The coverage must (a) meet the minimum essential coverage, minimum value, and affordability requirements of the employer responsibility provisions under Section 4980H of the Code (ACA), and (b) otherwise satisfy the requirements of the Code § 4980H (ACA) if provided by the State.

## **11. DISABILITY ACCOMMODATIONS**

State does not discriminate on the basis of disability in admission to, access to, or operations of its programs, services, or activities. Individuals employed by or under contract to Contractor who need aids, alternative document formats, or services for effective communications or other disability related accommodations in the performance of this contract in State's correctional facilities or on its premises are invited to make their needs and preferences known to this office. Interested parties should provide as much advance notice as possible.

## **12. TECHNOLOGY ACCESS FOR BLIND OR VISUALLY IMPAIRED**

Contractor acknowledges that no state funds may be expended for the purchase of information technology equipment and software for use by employees, program participants, or members of the public unless it provides blind or visually impaired individuals with access, including interactive use of the equipment and services, that is equivalent to that provided to individuals who are not blind or visually impaired. (§ 18-5-603, MCA) Contact the State Procurement Bureau at (406) 444-2575 for more information concerning nonvisual access standards.

## **13. REGISTRATION WITH THE SECRETARY OF STATE**

Any business intending to transact business in Montana must register with the Secretary of State. Businesses that are domiciled in another state or country, but which are conducting activity in Montana, must determine whether they are transacting business in Montana in accordance with §§ 35-14-1505, 35-8-1001, 35-12-1309 MCA. Such businesses should obtain the guidance of their attorney or accountant to determine whether their activity is considered transacting business.

If businesses determine that they are transacting business in Montana, they must register with the Secretary of State and obtain a certificate of authority to demonstrate that they are in good standing in Montana. §§ 35-8-1001, 35-12-1302, and 35-14-1502, MCA. To obtain registration materials, call the Office of the Secretary of State at (406) 444-3665, or visit their website at <http://sos.mt.gov>.

## **14. INTELLECTUAL PROPERTY/OWNERSHIP/INDEMNIFICATION**

**14.1 Mutual Use.** Contractor shall make available to State, on a royalty-free, non-exclusive basis, all patent and other legal rights in or to inventions first conceived and reduced to practice or created in whole or in part under this Contract, if such availability is necessary for State to receive the benefits of this Contract. Unless otherwise specified in a statement of work, both parties shall have a royalty-free, nonexclusive, and irrevocable

right to reproduce, publish, or otherwise use copyrightable property created under this Contract. This mutual right includes (i) all deliverables and other materials, products, modifications that Contractor has developed or prepared for State under this Contract; (ii) any program code, or site-related program code that Contractor has created, developed, or prepared under or primarily in support of the performance of its specific obligations under this Contract; and (iii) manuals, training materials, and documentation. All information described in (i), (ii), and (iii) is collectively called the "Work Product".

**14.2 Title and Ownership Rights.** State retains title to and all ownership rights in all data and content, including but not limited to multimedia or images (graphics, audio, and video), text, and the like provided by State (the "Content"), but grants Contractor the right to access and use Content for the purpose of complying with its obligations under this Contract and any applicable statement of work.

**14.3 Ownership of Work Product.** Contractor shall execute any documents or take any other actions as may reasonably be necessary, or as State may reasonably request, to perfect State's ownership of any Work Product.

**14.4 Copy of Work Product.** Contractor shall, at no cost to State, deliver to State, upon State's request during the term of this Contract or at its expiration or termination, a current copy of all Work Product in the form and on the media in use as of the date of State's request, or such expiration or termination.

**14.5 Ownership of Contractor Pre-Existing Materials.** Contractor retains exclusive ownership of the Licensed Materials and intellectual property and property rights therein, including, but not limited to, all literary or other works of authorship (such as software programs and code, documentation, reports, and similar works), information, data, intellectual property, techniques, subroutines, algorithms, methods or related rights and derivatives that Contractor owns at the time this Contract is executed or otherwise developed or acquired independent of this Contract and employed by Contractor in connection with the services provided to State (the "Contractor Pre-existing Materials"). Contractor Pre-existing Materials are not Work Product. Contractor shall provide full disclosure of any Contractor Pre-Existing Materials to State before its use and to prove its ownership. If, however, Contractor fails to disclose to State such Contractor Pre-Existing Materials, Contractor shall grant State a nonexclusive, worldwide, paid-up license to use any Contractor Pre-Existing Materials embedded in the Work Product to the extent such Contractor Pre-Existing Materials are necessary for State to receive the intended benefit under this Contract for the duration of the Contract. Such license shall remain in effect for so long as such Pre-Existing Materials remain embedded in the Work Product or until the Contract is terminated, whichever occurs first. State acknowledges that State may suggest Concepts and the parties may discover or create Concepts jointly and that Contractor, at its sole option, may incorporate such Concepts in the Licensed Materials or in other products or services that may or may not be made available to State. Any such Concept shall be and remain solely the property of Contractor and may be used and sold, licensed, or otherwise provided by Contractor to third parties, or published or otherwise publicly disclosed, in Contractor's sole discretion without notice, attribution, payment of royalties, or liability to State. State hereby assigns to Contractor any and all of its right, title, and interest, including copyright and patent rights, in and to any such Concepts.

Except as otherwise provided for in Section 14.3, Ownership of Work Product, or as may be expressly agreed in any Statement of Work, Contractor shall retain title to and ownership of any software and/or hardware it provides under this Contract.

**14.6 Third-Party Claim.** In the event of any claim by any third party against the State that the Licensed Software or other products furnished under this Contract infringe upon or violate any Intellectual

Property Right, the State shall promptly notify the Contractor. The Contractor shall defend such claim, in the State's name or its own name, as appropriate, but at the Contractor's expense. The Contractor will indemnify the State against all costs, damages, and attorney's fees that accrue as a result of such claim. Such indemnification will be conditional upon the following:

- a. the State will promptly notify the Contractor of the claim in writing; and
- b. the State will allow the Contractor to control, and will cooperate with the Contractor in the defense and any related settlement negotiations, provided that:
  - i. the Contractor will permit the State to participate in the defense and settlement of any such claim, at the State's own expense, with counsel of its choosing; and
  - ii. the Contractor shall not enter into or agree to any settlement containing any admission of or stipulation to any guilt, fault, liability or wrongdoing on the part of the State, its elected and appointed officials, agents or employees without the State's prior written consent.

**14.7 Product Subject of Claim.** If the Licensed Software or any product or Documentation furnished is likely to or does become the subject of a claim of infringement of an Intellectual Property Right, then the Contractor shall either procure for the State the right to continue using the alleged infringing product; or modify the product so that it becomes non-infringing; or replace it with one that is at least functionally equivalent and shall not degrade the operation or performance of the Licensed Software, product, or Documentation. If none of the above options may be accomplished within a reasonable time and at commercially reasonable rates or if the use of such product by the State shall be prevented by injunction, the State agrees to return the product to the Contractor upon written request. The Contractor shall accept the return from the State of the infringing component, along with any other components of any products rendered unusable as a result of the infringing component and refund the full price paid to Contractor for such components. The State is not precluded from seeking other remedies available to it hereunder and in equity or law for any damages it may sustain due to diminished ability or inability to continue using such product.

## **15. ESCROW**

**15.1 Source Code.** When requested by the State, Contractor shall place the Application's Source Code and its Documentation with an escrow agent, acceptable to both parties, in accordance with the terms and conditions of an escrow agreement, the exact content of which shall be agreed upon by the Parties. Contractor shall pay all escrow agent fees.

**15.2 Source Code Escrow Agreement.** There shall be an escrow set up into which Source Code shall be deposited and there shall be an escrow agreement between the parties. The Escrow Agreement shall provide that the escrow agent shall release the Source Code Escrow to the State in the event of: (a) Contractor's insolvency, bankruptcy, or involvement in an involuntary proceeding for protection of its creditors, (b) Contractor's material breach of this Contract; (c) Contractor's failure to continue development of the Software contained in the Application; (d) Contractor's failure to provide the State with the most recent version of the Software contained in the Application; or (e) any other circumstance whereby Contractor can no longer satisfy its obligation to provide Services to the State under this Contract, (a) through (e) above are referred to individually as a "Release Condition" or collectively as "Release Conditions".

**15.3 Release.** Upon occurrence of a Release Condition, the State shall be deemed to have, automatically, a nonexclusive, fully paid, non-terminable, royalty-free, world-wide Subscription to use, modify, copy, produce Derivative Works from, display, disclose to persons who have entered into a written agreement containing substantially the same confidentiality provisions as in this Contract for the purpose of accessing and

maintaining the Software contained in the Application for the State, and otherwise to utilize the Software and the Source Code and other materials necessary to maintain and improve the Software for use by the State and otherwise treat the Source Code as Object Code, subject always to the limitations in this Contract as clarified by this Section.

## **16. CONTRACT OVERSIGHT**

**16.1 CIO Oversight.** The Chief Information Officer (CIO) for the State of Montana, or designee, is authorized to perform Contract oversight activities. Such activities may include the identification, analysis, resolution, and prevention of deficiencies that may occur within the performance of Contract obligations. The CIO may require the issuance of a right to assurance or may issue a stop work order (§ 2-17-514 MCA).

**16.2 Right to Assurance.** If State, in good faith, has reason to believe that Contractor does not intend to, is unable to, or has refused to perform or continue performing all material obligations under this Contract, State may demand in writing that Contractor give a written assurance of intent to perform. Contractor's failure to provide written assurance within the number of days specified in the demand (in no event less than five business days may, at State's option, be the basis for terminating this Contract and pursuing the rights and remedies available under this Contract or at law).

**16.3 Stop Work Order.** State may, at any time, by written order to Contractor require Contractor to stop any or all parts of the work required by this Contract for the period of days indicated by State after the order is delivered to Contractor. The order must be specifically identified as a stop work order issued under this clause. Upon receipt of the order, Contractor shall immediately comply with its terms and take all reasonable steps to minimize the incurrence of costs allocable to the work covered by the order during the period of work stoppage. If a stop work order issued under this clause is canceled or the period of the order or any extension expires, Contractor shall resume work. The State Project Manager shall make the necessary adjustment in the delivery schedule or Contract price, or both, and this Contract shall be amended in writing accordingly.

**16.4 Physical Access.** Contractor represents and warrants that it has established and during the Term it will at all times enforce:

- (a) Physical protection mechanisms for all information assets and information technology to ensure such assets and technology are stored and protected in appropriate data centers;
- (b) Appropriate facility entry controls limiting physical access to systems that store or process data;
- (c) Processes to ensure access to facilities is monitored and is restricted on a "need to know" basis;
- (d) Controls to physically secure all Confidential Information and to properly destroy such information when it is no longer needed.

**16.5 Prohibited Activities and Spoofing.** Contractor and its officers, employees, agents, subcontractors, and affiliated users, shall not violate or attempt to violate the security of the State's network or interfere or attempt to interfere with the State's systems, networks, authentication measures, servers or equipment, or with the use of or access to the State's network by any other user. Such prohibited activity includes (i) accessing or logging into a server where access is not authorized; (ii) unauthorized probing, scanning, or testing the security or vulnerability of the State's network or other systems; and (iii) attempting to portray itself as the State or an affiliate of the State or otherwise attempting to gain access, without authorization, via the State's network or systems to any account or information technology resource not belonging to Contractor or its officers, employees, agents, subcontractors, and affiliated users ("Spoofing"). Contractor shall not perform unauthorized Spoofing or scanning of any kind, including user account identity. Systems shall not Spoof the mt.gov domain or engage in Email Spoofing. Email Spoofing is the creation of

email messages with a forged sender address. For example, Email Spoofing includes creating or sending emails using the State's domain.

**16.6 Security Requirements.** Systems delivered under this Contract shall have assurances that they are adequately secure. For purposes of Contract approval considerations herein, security is defined as freedom from those conditions that can cause loss of assets with unacceptable consequences. Understandably, no system can be guaranteed as 100% secure. The State of Montana has established control standards and policies that align with the NIST Cybersecurity Framework. NIST SP 800-53, the latest revision is used for control adherence evaluation established after establishing a security categorization utilizing FIPS PUB 199. Thus, the Contractor shall provide reasonable proof, through independent audit reports, that the system specified under this Contract can meet or exceed expectations for both Federal and State of Montana regulatory requirements to ensure the risk is minimized to better protect privacy, confidentiality, integrity, and availability. Annual assurance statements shall be delivered to the Contract Liaison. Annual assurance statements must contain a detailed accounting of the security controls provided and must be in the form of a NIST Security Assessment Report, FedRamp Security Assessment Report, or SOC 2 report. SOC 1 reports may be accepted by exception and where applicable, SOC 3 reports will not be accepted.

## **17. CONTRACT TERMINATION**

**17.1 State Termination for Cause with Notice to Cure Requirement.** State may terminate this Contract in whole or in part for Contractor's failure to materially perform any of the services, duties, terms, or conditions contained in this Contract after giving Contractor written notice of the stated failure. The written notice must demand performance of the stated failure within a specified period of time of not less than **30** days starting from date of receipt of written notice. If the demanded performance is not completed within the specified period, the termination is effective at the end of the specified period.

**17.2 State Termination for Convenience.** State may, by written notice to Contractor, terminate this Contract without cause and without incurring liability to Contractor. State shall give notice of termination to Contractor at least **30** days before the effective date of termination. State shall pay Contractor only that amount, or prorated portion thereof, owed to Contractor up to the date State's termination takes effect. This is Contractor's sole remedy. State shall not be liable to Contractor for any other payments or damages arising from termination under this Section, including but not limited to general, special, or consequential damages such as lost profits or revenues.

**17.3 Contractor Termination for Cause with Notice to Cure Requirement.** Contractor may terminate this Contract for State's failure to perform any of its duties under this Contract after giving State written notice of the failure. The written notice must demand performance of the stated failure within a specified period of time of not less than **30** days starting from date of receipt of written notice. If the demanded performance is not completed within the specified period, the termination is effective at the end of the specified period.

**17.4 Reduction of Funding.** State must, by law, terminate this Contract if funds are not appropriated or otherwise made available to support State's continuation of performance of this Contract in a subsequent fiscal period. (§ 18-4-313(4), MCA) If state or federal government funds are not appropriated or otherwise made available through the state budgeting process to support continued performance of this Contract (whether at an initial Contract payment level or any Contract increases to that initial level) in subsequent fiscal periods, State shall terminate this Contract as required by law. State shall provide Contractor the date State's termination shall take effect. State shall not be liable to Contractor for any payment that would have been payable had the

Contract not been terminated under this provision. As stated above, State shall be liable to Contractor only for the payment, or prorated portion of that payment, owed to Contractor up to the date State's termination takes effect. This is Contractor's sole remedy. State shall not be liable to Contractor for any other payments or damages arising from termination under this Section, including but not limited to general, special, or consequential damages such as lost profits or revenues.

**17.5 Termination for Noncompliance with Department of Administration Requirements.** The Department of Administration, under the provisions of § 2-17-514, MCA, retains the right to cancel or modify any Contract, project, or activity that is not in compliance with the Department's Plan for Information Technology, State Strategic Plan for Information Technology, or any Statewide IT policy or standard in effect as of the date of Contract execution. In the event of such termination, State will pay for products and services delivered to date and any applicable termination fee specified in the statement of work or work order. Any modifications to this Contract must be mutually agreed to by the parties.

**17.6 Cease Use.** Upon the termination date, State will immediately cease all use of the Application and Services. Notwithstanding the foregoing, Contractor shall not destroy any State Data maintained by Contractor until State has received a full and complete copy of the State Data and has notified Contractor that it has successfully migrated the State Data to a new platform after which point the provisions of 5.3 no longer apply and Contractor may not retain any archival copies of State Data.

## **18. EVENT OF BREACH – REMEDIES**

**18.1 Event of Breach by Contractor.** Any one or more of the following Contractor acts or omissions constitute an event of material breach under this Contract:

- Products or services furnished fail to conform to any requirements of RFP# COR-RFP-2020-0259N;
- Failure to submit any report required by this Contract;
- Failure to perform any of the other terms and conditions of this Contract;
- Beginning work under this Contract without prior State approval or breaching Section 24.1, Technical or Contractual Problems, obligations; or
- Voluntary or involuntary bankruptcy or receivership.

**18.2 Event of Breach by State.** State's failure to perform any material terms or conditions of this Contract constitutes an event of breach.

**18.3 Actions in Event of Breach.** Upon Contractor's material breach, State may:

- Terminate this Contract under Section 17.1, State Termination for Cause with Notice to Cure and pursue any of its remedies under this Contract, at law, or in equity; or
- Treat this Contract as materially breached and pursue any of its remedies under this Contract, at law, or in equity.

Upon State's material breach, Contractor may:

- Terminate this Contract under Section 17.2, Contractor Termination for Cause with Notice to Cure, and pursue any of its remedies under this Contract, at law, or in equity; or
- Treat this Contract as materially breached and, except as the remedy is limited in this Contract, pursue any of its remedies under this Contract, at law, or in equity.

## **19. CHOICE OF LAW AND VENUE**

Montana law governs this Contract. This Contract will be governed solely by the laws of the State of Montana, without reference to: (a) any conflicts of law principle that would apply the substantive laws of another jurisdiction to the parties' rights or duties; (b) the 1980 United Nations Convention on Contracts for the International Sale of Goods; (c) other international laws; or (d) the Uniform Computer Information Transactions Act as adopted in any jurisdiction. The parties agree that any litigation concerning this bid, proposal, or this Contract must be brought in the First Judicial District in and for the County of Lewis and Clark, State of Montana, and each party shall pay its own costs and attorney fees (§ 18-1-401, MCA.), except as provided in Section 7, Defense, Indemnification/Hold Harmless.

## **20. FORCE MAJEURE**

Neither party is responsible for failure to fulfill its obligations due to causes beyond its reasonable control, including without limitation, acts or omissions of government or military authority, acts of God, materials shortages, transportation delays, fires, floods, labor disturbances, riots, wars, terrorist acts, or any other causes, directly or indirectly beyond the reasonable control of the nonperforming party, so long as such party uses its best efforts to remedy such failure or delays. A party affected by a force majeure condition shall provide written notice to the other party within a reasonable time of the onset of the condition. In no event, however, shall the notice be provided later than five working days after the onset. If the notice is not provided within the five-day period, then a party may not claim a force majeure event. A force majeure condition suspends a party's obligations under this Contract, unless the parties mutually agree that the obligation is excused because of the condition.

## **21. WAIVER OF BREACH**

Either party's failure to enforce any Contract provisions after any event of breach is not a waiver of its right to enforce the provisions and exercise appropriate remedies if the breach occurs again. Neither party may assert the defense of waiver in these situations.

## **22. CONFORMANCE WITH CONTRACT**

No alteration of the terms, conditions, delivery, price, quality, quantities, or specifications of the Contract shall be granted without the State Procurement Bureau's prior written consent. Product or services provided that do not conform to the Contract terms, conditions, and specifications may be rejected and returned at Contractor's expense.

## **23. LIAISONS AND SERVICE OF NOTICES**

**23.1 Contract Liaisons.** All project management and coordination on State's behalf must be through a single point of contact designated as State's liaison. Contractor shall designate a liaison that will provide the single point of contact for management and coordination of Contractor's work. All work performed under this Contract must be coordinated between State's Liaison and Contractor's Liaison.

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Maggie Brockhaus is State's Liaison  
5 S. Last Chance Gulch  
Helena, MT 59601  
(406) 444-9648  
[Margaret.Brockhaus@mt.gov](mailto:Margaret.Brockhaus@mt.gov)

Byron Harrison is Contractor's Liaison  
2090 Columbiana Road  
Ste. 4000  
Birmingham, AL 35216  
(205) 536-8400  
[byron.harrison@naphcare.com](mailto:byron.harrison@naphcare.com)

**23.2 Contract Manager.** State's Contract Manager identified below is State's single point of contact and shall perform all Contract management under § 2-17-512, MCA, on State's behalf. Written notices, requests, complaints, or any other issues regarding this Contract should be directed to State's Contract Manager.

Kristi L. Hernandez is State's Contract Manager  
5 S. Last Chance Gulch  
Helena, MT 59601  
(406) 444-7649  
[Kristi.Hernandez@mt.gov](mailto:Kristi.Hernandez@mt.gov)

Byron Harrison is Contractor's Contract Manager  
2090 Columbiana Road  
Ste. 4000  
Birmingham, AL 35216  
(205) 536-8400  
[byron.harrison@naphcare.com](mailto:byron.harrison@naphcare.com)

**23.3 Notifications.** State's liaison or manager and Contractor's liaison or manager may be changed by written notice to the other party. Written notices, requests, or complaints must first be directed to the liaison. Notice may be provided by personal service, mail, or facsimile. If notice is provided by personal service or facsimile, the notice is effective upon receipt; if notice is provided by mail, the notice is effective on the third business day after mailing.

**23.4 Identification/Substitution of Personnel.** The personnel identified or described in Contractor's proposal shall perform the services provided for State under this Contract. Contractor agrees that any personnel substituted during the term of this Contract must be able to conduct the required work to industry standards and be equally or better qualified than the personnel originally assigned. State reserves the right to approve Contractor personnel assigned to work under this Contract and any changes or substitutions to such personnel. State's approval of a substitution will not be unreasonably withheld. This approval or disapproval shall not relieve Contractor of its duties to perform and be responsible for its obligations under this Contract. State reserves the right to require Contractor personnel replacement. If Contractor personnel become unavailable, Contractor shall provide an equally qualified replacement in time to avoid delays to the work plan.

## **24. MEETINGS**

**24.1 Technical or Contractual Problems.** Contractor shall meet with State's personnel, or designated representatives, to resolve technical or contractual problems occurring during the Contract term or to discuss the progress made by Contractor and State in the performance of their respective obligations, at no additional cost to the State. State may request the meetings as problems arise and will be coordinated by State. State shall provide Contractor a minimum of three full working days' notice of meeting date, time, and location. Face-to-face meetings are desired; however, at Contractor's option and expense, a conference call meeting may be substituted. Contractor's consistent failure to participate in problem resolution meetings, Contractor missing or rescheduling two consecutive meetings, or Contractor's failure to make a good faith effort to resolve problems may result in termination of the Contract.

**24.2 Progress Meetings.** During the term of this Contract, State's Project Manager shall plan and schedule progress meetings with Contractor to discuss Contractor's and State's progress in the performance of their respective obligations. These progress meetings will include State's Project Manager, Contractor's Project Manager, and any other additional personnel involved in the performance of this Contract as required. At each meeting, Contractor shall provide State with a written status report that identifies any problem or circumstance encountered by Contractor, or of which Contractor gained knowledge during the period since the last such status report, which may prevent Contractor from completing or timely completing any of its obligations or may generate charges in excess of those previously agreed to by the parties. This may include the alleged failure or inadequacy of State to perform its obligation under this Contract. Contractor shall identify the amount of excess charges, if any, and the cause of any identified problem or circumstance and the steps taken to remedy the same.

**24.3 Failure to Notify.** If Contractor fails to specify in writing any problem or circumstance that materially affects the costs of its delivery of services or products, including an alleged material breach by State, about which Contractor knew or reasonably should have known with respect to the period during the term covered by Contractor's status report, Contractor shall not be entitled to rely upon such problem or circumstance as a purported justification for an increase in the price for the agreed upon scope.

**24.4 State's Failure or Delay.** For a problem or circumstance identified in Contractor's status report in which Contractor claims was the result of State's failure or delay in discharging any State obligation, State shall review same and determine if such problem or circumstance was in fact the result of such failure or delay. If State agrees as to the cause of such problem or circumstance, then the parties shall extend any deadlines or due dates affected thereby in writing and provide for any additional charges by Contractor. This includes, but is not limited to, provided customizations or interfaces that rely on external systems managed by the State or the State's third-party vendors. This is Contractor's sole remedy. If State does not agree as to the cause of such problem or circumstance, the parties shall each attempt to resolve the problem or circumstance in a manner satisfactory to both parties.

## **25. TRANSITION ASSISTANCE**

If this Contract is not renewed at the end of this term, if the Contract is otherwise terminated before project completion, or if particular work on a project is terminated for any reason, Contractor shall provide transition assistance for a reasonable, mutually agreed period of time after the expiration or termination of this Contract or particular work under this Contract. The purpose of this assistance is to allow for the expired or terminated portion of the services to continue without interruption or adverse effect, and to facilitate the orderly transfer of such services to State or its designees. Contractor will provide the State Data in an industry-standard format and transmission method mutually agreed to by the parties. The parties agree that such transition assistance is governed by the terms and conditions of this Contract, except for those terms or conditions that do not reasonably apply to such transition assistance. If the Contract is terminated by Contractor for material breach by State of its payment obligations, then Contractor will provide transition assistance as described in this Section only if, prior to the start of the transition, State pays to Contractor all past due undisputed accounts receivable and prepays (at least 15 days in advance of the commencement of the applicable monthly period) the applicable monthly fees during the transition. State shall pay Contractor for any resources utilized in performing such transition assistance at the most current Contract rates. If State terminates a project or this Contract for cause, then State may offset the cost of paying Contractor for the additional resources Contractor utilized in providing transition assistance with any damages State may have sustained as a result of Contractor's breach.

## **26. NEW TECHNOLOGIES**

The State reserves the right to purchase other offerings and new offerings related to the products and/or services under this Contract.

## **27. TAX EXEMPTION**

State of Montana is exempt from Federal Excise Taxes (#81-0302402) except as otherwise provided in the federal Patient Protection and Affordable Care Act [P.L. 111-148, 124 Stat. 119].

## **28. PERSONAL PROPERTY TAX**

All applicable personal property taxes will be paid by Contractor.

## **31. AUTHORITY**

This Contract is issued under authority of Title 18, Montana Code Annotated, and the Administrative Rules of Montana, Title 2, chapter 5.

## **32. SEVERABILITY**

A declaration by any court or any other binding legal authority that any provision of the Contract is illegal and void shall not affect the legality and enforceability of any other provision of the Contract, unless the provisions are mutually and materially dependent.

## **33. PARAGRAPH HEADINGS**

The captions and headings set forth in this Contract are for convenience of reference only and shall not be construed so as to define or limit the terms and provisions hereof.

## **32. SCOPE, ENTIRE AGREEMENT, AND AMENDMENT**

**32.1 Contract.** This Contract consists of 40 numbered pages, and shall include the Contractor's RFP Submission and any amendments thereto, the Business Associate Agreement, attached as Exhibit A, Contractors Obligations, attached as Exhibit B, and State's Obligations, to include its Solicitation RFP# COR-RFP-2020-0259N, as amended, attached as Exhibit C. In the case of dispute or ambiguity arising between or among the documents, the order of precedence of document interpretation shall be this Contract, Contractor's RFP Submission and the State's Solicitation.

**32.2 Entire Agreement.** These documents are the entire agreement of the parties. They supersede all prior agreements, representations, and understandings. Any amendment or modification must be in a written agreement signed by the parties.

**32.3 Amendment.** This Contract may be amended or revised if approved by authorized parties, in writing, and signed by all parties to this Contract.

**33. WAIVER**

State's waiver of any Contractor obligation or responsibility in a specific situation is not a waiver in a future similar situation or is not a waiver of any other Contractor obligation or responsibility.

**34. CONFIDENTIALITY**

It is understood that in the course of the engagement established under this Contract, each party may learn of or obtain copies of confidential or proprietary software, systems, manuals, documents, protocols, procedures, or other materials developed by or belonging to the other party, and not generally available to the public (hereinafter referred to as "Confidential Information"). All Confidential Information shall be and remain the property of the party originally having ownership thereof. Neither party will, without the express written consent of the other party, use the Confidential Information of the other party, except as expressly contemplated by this Contract, and the receiving party shall cease all use of the other party's Confidential Information upon the termination or expiration of this Contract. Except as required by law or legal process, each party shall maintain the confidentiality of the Confidential Information provided hereunder, and shall not disclose such information to third parties. This provision shall survive the termination or expiration of this Contract.

**35. EXECUTION**

The parties through their authorized agents have executed this Contract on the dates set out below.

**STATE OF MONTANA**  
**Montana Department of Corrections**  
**5 S. Last Chance Gulch**  
**Helena, MT 59601**

**NAPHCARE, INC.**  
**2090 Columbiana Road**  
**Ste. 4000**  
**Birmingham, AL 35216**  
**Federal ID# 58-1823464**

BY: Connie Winner, Administrator, CSD

(Name/Title)

*Connie Winner*

ABDE2DF4207948A...

(Signature)

3/30/2021

DATE: \_\_\_\_\_

BY: Bradford T. McLane, Chief Executive Officer

(Name/Title)

*Brad McLane*

5BCC1B1585654EF...

(Signature)

3/30/2021

DATE: \_\_\_\_\_

Approved as to Form:

DocuSigned by:

*Jeni Molin*

3/30/2021


309046052C7C416...

Contracts Officer

(Date)

State Procurement Bureau

Approved as to Legal Content:

DocuSigned by:  
 3/30/2021  
41E915492B274F4...  
Legal Counsel (Date)  
Department of Corrections

Chief Information Officer Approval:

Contractor is notified that, under the provisions of § 2-17-514, MCA, the Department of Administration retains the right to cancel or modify any contract, project, or activity that is not in compliance with the Agency's Plan for Information Technology, the State Strategic Plan for Information Technology, or any statewide IT policy or standard.

DocuSigned by:  
 3/30/2021  
0999BB1A7DDC479...  
Chief Information Officer (Date)  
Department of Administration  
#ITPR\_5622\_2021338181

## **Exhibit A – Business Associate Agreement**

This Business Associate Agreement (“Agreement”) dated \_\_\_\_\_ (the “Effective Date”), is entered into by and between the State of Montana, Montana Department of Corrections (“Covered Entity”) and NaphCare, Inc. (“Business Associate”), for the purposes of complying with the privacy and security regulations issued by the United States Department of Health and Human Services under the Health Insurance Portability and Accountability Act of 1996 and its implementing regulations (“HIPAA”) and the privacy and security provisions of the American Recovery and Reinvestment Act of 2009 and its implementing regulations (“ARRA”). Covered Entity and Business Associate may be individually referred to as “Party,” and collectively referred to as the “Parties.”

**WHEREAS**, Covered Entity and Business Associate have entered into, or are entering into, or may subsequently enter into, agreements or other documented arrangements (collectively, the “Business Arrangements”) pursuant to which Business Associate may provide services for Covered Entity that require Business Associate to access, receive, maintain, use or transmit health information that is protected by state and/or federal law; and

**WHEREAS**, pursuant to the Administrative Simplification provisions of the Health Insurance Portability and Accountability Act of 1996 (“HIPAA”), the U.S. Department of Health & Human Services (“HHS”) promulgated the Standards for Privacy of Individually Identifiable Health Information (the “Privacy Standards”), at 45 C.F.R. Parts 160 and 164, requiring certain individuals and entities subject to the Privacy Standards (including, but not limited to, parties meeting the definition of “covered entity” or “business associate”) to protect the privacy of certain individually identifiable health information (“Protected Health Information”, or “PHI”); and

**WHEREAS**, pursuant to HIPAA, HHS has issued the Security Standards (the “Security Standards”), at 45 C.F.R. Parts 160, 162 and 164, for the protection of electronic protected health information (“EPI”); and

**WHEREAS**, in order to protect the privacy and security of PHI, including EPHI, created or maintained by or on behalf of the Covered Entity, the Privacy Standards and Security Standards require a Covered Entity to enter into a “business associate agreement” with certain individuals and entities providing services for or on behalf of the Covered Entity if such services require the use or disclosure of PHI or EPHI; and

**WHEREAS**, Business Associate and Covered Entity desire to enter into this Business Associate Agreement.

**NOW THEREFORE**, in consideration of the mutual promises set forth in this Agreement and the Business Arrangements, and other good and valuable consideration, the sufficiency and receipt of which are hereby severally acknowledged, the Parties agree as follows:

### **A.1. Business Associate Obligations.**

- A.1.1. Business Associate may receive from Covered Entity, or create, receive, maintain or transmit on behalf of Covered Entity, health information that is protected under applicable state and/or federal law, including without limitation, PHI and EPHI. All capitalized terms not otherwise defined in this Agreement shall have the meanings set forth in HIPAA or ARRA, as applicable, and all references to PHI herein shall be construed to include EPHI. Business Associate agrees not to use or disclose (or permit the use or disclosure of) PHI in a manner that would violate the requirements

of the Privacy Standards or Security Standards (as of the compliance deadline for such standards) if the PHI were used or disclosed by Covered Entity in the same manner. Business Associate shall use appropriate safeguards to prevent the use or disclosure of PHI other than as expressly permitted under this Agreement.

- A.1.2. Business Associate shall implement administrative, physical, and technical safeguards that reasonably and appropriately protect the confidentiality, integrity, and availability of the PHI that it creates, receives, maintains or transmits on behalf of Covered Entity. Business Associate covenants that such safeguards shall include, without limitation, implementing written policies and procedures in compliance with HIPAA and ARRA, conducting a security risk assessment, and training Business Associate employees who will have access to PHI with respect to the policies and procedures required by HIPAA and ARRA.
- A.1.3. In the event of a Breach (as hereinafter defined) of any Unsecured PHI or EPHI that Business Associate accesses, maintains, retains, modifies, records, stores, destroys, or otherwise holds or uses on behalf of Covered Entity in connection with the Business Arrangements, Business Associate shall provide notice of such Breach to Covered Entity within ten (10) calendar days. "Breach" shall mean the unauthorized acquisition, access, use, or disclosure of PHI which compromises the security or privacy of such information. "Unsecured PHI or EPHI" shall mean PHI or EPHI that is not rendered unusable, unreadable, or indecipherable to unauthorized individuals through the use of a technology or methodology specified by the Secretary.
- A.1.4. Notice of a Breach to Covered Entity shall include the identification of each individual whose PHI or EPHI has been, or is reasonably believed to have been, accessed, acquired, or disclosed during the Breach. At the request of Covered Entity, Business Associate shall identify: the date of the Breach, the date the Breach was discovered by the Business Associate, or, by the exercise of reasonable diligence should have been known, the scope of the Breach, the Business Associate's response to the Breach, the identification of the party responsible for causing the Breach, if known, and any other available information that the Covered Entity is required to include in any notification to the individual(s) affected.
- A.1.5. In the event of a Breach, Business Associate shall, in consultation with Covered Entity, mitigate, to the extent practicable, any harmful effect of such Breach that is known to Business Associate.
- A.2. **Use of PHI.** Except as otherwise permitted herein or required by law, Business Associate shall use PHI only for the following purposes: (i) solely for Covered Entity's benefit and only for the purpose of performing services for Covered Entity as such services are defined in Business Arrangements, and (ii) as necessary for the proper management and administration of the Business Associate or to carry out its legal responsibilities, provided that such uses are permitted under federal and state law. Covered Entity shall retain all rights in the PHI not granted herein. Use, creation, and disclosure of de-identified health information by Business Associate is not permitted unless expressly authorized in writing by Covered Entity.
- A.3. **Disclosure of PHI.** Subject to any limitations in this Agreement, Business Associate may disclose PHI to any third-party persons or entities as necessary to perform its obligations under the Business Arrangements and as permitted or required by applicable federal or state law. Further, Business Associate may disclose PHI for the proper management and administration of the Business Associate, provided either that (i) such disclosures are required by law, or (ii) Business Associate: (a) obtains reasonable

assurances from any third party to whom the information is disclosed that it will be held confidentially and further used and disclosed only as required by law or for the purposes for which it was disclosed to the third party; (b) requires the third party to agree to immediately notify Business Associate of any instances of which it is aware that PHI is being used or disclosed for a purpose that is not otherwise provided for in this Agreement or for a purpose not expressly permitted by the Privacy Standards; and (c) ensures that all disclosures of PHI by Business Associate and the third party comply with the principle of “minimum necessary use and disclosure,” i.e., only the minimum PHI that is necessary to accomplish the intended purpose may be disclosed. Business Associate may disclose PHI received from Covered Entity, or created or received by Business Associate on behalf of Covered Entity, to agents, including a subcontractor (collectively, “Recipients”) and may allow Recipients to create or receive PHI on its behalf only if Recipients agree in writing to the same restrictions and conditions that apply to the Business Associate under this Agreement, including, but not limited to, the requirement that the Recipients will: (i) comply with all requirements of the Privacy and Security Standards that apply to the Business Associate, (ii) appropriately safeguard all PHI that is either created or received, and (iii) comply with the Breach notification and mitigation requirements under this Agreement. To the extent permitted by law, Business Associate shall be fully liable to Covered Entity for any acts, failures, or omissions of Recipients in furnishing the services as if they were the Business Associate’s own acts, failures, or omissions. Business Associate shall report to Covered Entity any use or disclosure of PHI not permitted by this Agreement, of which it becomes aware, such report to be made within five (5) calendar days of the Business Associate becoming aware of such use or disclosure. Business Associate agrees to mitigate, to the extent practical and unless otherwise requested by Covered Entity in writing, any harmful effect that is known to Business Associate and is the result of a use or disclosure of PHI by Business Associate or Recipients in violation of this Agreement.

**A.4. Individual Rights Regarding Designated Record Sets.** If Business Associate maintains a Designated Record Set on behalf of Covered Entity, Business Associate shall (i) provide access to, and permit inspection and copying of, PHI by Covered Entity or, as directed by Covered Entity, an individual who is the subject of the PHI under conditions and limitations required under 45 C.F.R. §164.524, as it may be amended from time to time, and (ii) amend PHI maintained by Business Associate as directed or agreed to by Covered Entity. Business Associate shall respond to any request from Covered Entity for access by an individual within five (5) calendar days of such request and shall make any amendment requested by Covered Entity within ten (10) calendar days of such request. The information shall be provided (i) in the form and format requested, if it is readily producible in such form and format; or, if not, in a readable form and format as agreed to by the Covered Entity and the individual, or (ii) in summary, if the individual has agreed in advance to accept the information in summary form. A reasonable, cost-based fee for copying PHI may be charged. Covered Entity shall determine whether a denial is appropriate, or an exception applies. Business Associate shall notify Covered Entity within five (5) days of receipt of any request for access or amendment by an individual. Covered Entity shall determine whether to grant or deny any access or amendment requested by the individual. Business Associate shall have a process in place for requests for amendments and for appending such requests to the Designated Record Set, as requested by Covered Entity.

**A.5. Accounting of Disclosures.** Business Associate shall make available to Covered Entity in response to a request from an individual, information required for an accounting of disclosures of PHI with respect to the individual, in accordance with 45 C.F.R. §164.528, as it may be amended from time to time, incorporating exceptions to such accounting designated under the regulation. Such accounting is limited to disclosures that were made in the six (6) years prior to the request and shall not include any disclosures

that were made prior to the compliance date of the Privacy Standards. Business Associate shall provide such information necessary to provide an accounting within thirty (30) days of Covered Entity's request. Such accounting must be provided without cost to the individual or to Covered Entity if it is the first accounting requested by an individual within any twelve (12) month period; however, a reasonable, cost-based fee may be charged for subsequent accountings if Business Associate informs the Covered Entity and the Covered Entity informs the individual in advance of the fee, and the individual is afforded an opportunity to withdraw or modify the request. Such accounting obligations shall survive termination of this Agreement and shall continue as long as Business Associate maintains PHI.

A.6. **Withdrawal of Authorization.** If the use or disclosure of PHI in this Agreement is based upon an individual's specific authorization for the use of his or her PHI, and (i) the individual revokes such authorization in writing, (ii) the effective date of such authorization has expired, or (iii) the consent or authorization is found to be defective in any manner that renders it invalid, Business Associate agrees, if it has notice of such revocation or invalidity, to cease the use and disclosure of any such individual's PHI except to the extent it has relied on such use or disclosure, or where an exception under the Privacy Standards expressly applies.

A.7. **Records and Audit.** Business Associate shall make available to the Secretary of the U.S. Department of Health and Human Services (the "Secretary") or its agents, its internal practices, books, and records relating to the use and disclosure of PHI received from, created, or received by Business Associate on behalf of Covered Entity for the purpose of determining Covered Entity's or Business Associate's compliance with the Privacy Standards and Security Standards, in a time and manner designated by the Secretary. Except to the extent prohibited by law, Business Associate agrees to notify Covered Entity immediately upon receipt by Business Associate of any and all requests by or on behalf of any and all government authorities served upon Business Associate for PHI.

A.8. **Confidentiality.**

A.8.1. Business Associate shall take any steps reasonably required to (i) protect PHI from unauthorized uses or disclosures, and (ii) maintain the confidentiality and integrity of PHI.

A.8.2. The Parties shall comply with all applicable federal and state laws governing the confidentiality and privacy of health information, respectively, including, without limitation, HIPAA and the regulations promulgated thereunder, and ARRA and the regulations promulgated thereunder.

A.9. **Term and Termination.**

A.9.1. This Agreement shall commence on the Effective Date and shall remain in effect until terminated in accordance with the terms of this Section 9, provided, however, that any termination shall not affect the respective obligations or rights of the Parties arising under this Agreement prior to the effective date of termination, all of which shall continue in accordance with their terms.

A.9.2. Covered Entity shall have the right to terminate this Agreement for any reason upon thirty (30) days written notice to Business Associate.

A.9.3. Covered Entity, at its sole discretion, may immediately terminate this Agreement and shall have no further obligations to Business Associate hereunder if any of the following events shall have occurred and be continuing:

A.9.3.1. Business Associate shall fail to observe or perform any material covenant or obligation contained in this Agreement for ten (10) calendar days after written notice thereof has been given to Business Associate by Covered Entity; or

- A.9.3.2. A violation by Business Associate of any provision of HIPAA or ARRA or applicable laws or regulations relating to the obligations of Business Associate under this Agreement.
- A.9.4. Termination of this Agreement for either of the two reasons set forth in Subsection A.9.3 above shall be cause for Covered Entity to immediately terminate for cause any Business Arrangement pursuant to which Business Associate is entitled to receive PHI from Covered Entity.
- A.9.5. Upon the termination of all Business Arrangements, either Party may terminate this Agreement by providing written notice to the other Party.
- A.9.6. Upon termination of this Agreement for any reason, Business Associate agrees either to return to Covered Entity or to destroy all PHI received from Covered Entity or otherwise through the performance of services for Covered Entity, that is in the possession or control of Business Associate or its agents. In the case of PHI which is not feasible to “return or destroy,” Business Associate shall retain only that PHI which is necessary for the Business Associate to continue its proper management and administration or to carry out its legal responsibilities, and will extend the protections of this Agreement to such PHI and limit further uses and disclosures of such PHI to those purposes that make the return or destruction infeasible, for so long as Business Associate maintains such PHI. Business Associate further agrees to comply with other applicable state or federal laws, which may require a specific period of retention, redaction, or other treatment of such PHI.
- A.10. **No Warranty.** PHI IS PROVIDED TO BUSINESS ASSOCIATE SOLELY ON AN “AS IS” BASIS. COVERED ENTITY DISCLAIMS ALL OTHER WARRANTIES, EXPRESS OR IMPLIED, INCLUDING, BUT NOT LIMITED TO, IMPLIED WARRANTIES OF MERCHANTABILITY, AND FITNESS FOR A PARTICULAR PURPOSE.
- A.11. **Ineligible Persons.** Business Associate represents and warrants to Covered Entity that Business Associate (i) is not currently excluded, debarred, or otherwise ineligible to participate in any federal health care program as defined in 42 U.S.C. Section 1320a-7b(f) (“the Federal Healthcare Programs”); (ii) has not been convicted of a criminal offense related to the provision of health care items or services and not yet been excluded, debarred, or otherwise declared ineligible to participate in the Federal Healthcare Programs, and (iii) is not under investigation or otherwise aware of any circumstances which may result in Business Associate being excluded from participation in the Federal Healthcare Programs. This shall be an ongoing representation and warranty during the term of this Agreement, and Business Associate shall immediately notify Covered Entity of any change in the status of the representations and warranty set forth in this Section. Any breach of this Section shall give Covered Entity the right to terminate this Agreement immediately for cause.
- A.12. **Indemnification.** Business Associate shall indemnify and hold harmless Covered Entity for and from all claims, demands, lawsuits, losses, damages, liabilities, penalties, fines, or expenses, including reasonable attorneys’ fees, asserted by persons or entities against Covered Entity, or incurred by Covered Entity as a result thereof, relating to PHI maintained, used, or disclosed by Business Associate, or by its agents or subcontractors, or arising in any way from Business Associate’s, or its agents’ or subcontractors’, obligations or performance under this Agreement or violations of applicable Federal or state laws, rules or regulations.
- A.13. **Insurance.** Business Associate shall obtain and maintain during the term of this Agreement liability insurance in an amount of not less than \$1,000,000.00 per claim, covering claims based on a violation of any applicable Federal or state laws or regulations concerning the privacy of patient information. Such

coverage shall be on an occurrence basis and name the Covered Entity as an additional insured. Upon written request, the Business Associate shall provide the Covered Entity a copy of such policy or a certificate from the insurer evidencing such coverage.

**A.14. Miscellaneous.**

**A.14.1. Notices.** All notices, requests, demands, and other communications required or permitted to be given or made under this Agreement shall be in writing, shall be effective upon receipt or attempted delivery, and shall be sent by (i) personal delivery; (ii) certified or registered United States mail, return receipt requested; or (iii) overnight delivery service with proof of delivery. Notices shall be sent to the addresses below. Neither Party shall refuse delivery of any notice hereunder.

If to Covered Entity: Montana Department of Corrections  
Central Office  
5 S. Last Chance Gulch  
Helena, MT 59620-1301  
Attention: Contracts Bureau Manager

If to Business Associate: NaphCare, Inc.  
2090 Columbiana Road, Ste. 4000  
Birmingham, AL 35216  
Attention: Legal Department

**A.14.2. Waiver.** No provision of this Agreement or any breach thereof shall be deemed waived unless such waiver is in writing and signed by the Party claimed to have waived such provision or breach. No waiver of a breach shall constitute a waiver of or excuse any different or subsequent breach.

**A.14.3. Assignment.** Neither Party may assign (whether by operation or law or otherwise) any of its rights or delegate or subcontract any of its obligations under this Agreement without the prior written consent of the other Party. Notwithstanding the foregoing, Covered Entity shall have the right to assign its rights and obligations hereunder to any entity that is an affiliate or successor of Covered Entity, without the prior approval of Business Associate.

**A.14.4. Severability.** Any provision of this Agreement that is determined to be invalid or unenforceable will be ineffective to the extent of such determination without invalidating the remaining provisions of this Agreement or affecting the validity or enforceability of such remaining provisions.

**A.14.5. Amendment.** The Parties agree to take such action as is necessary to amend this Agreement from time to time as is necessary for Covered Entity and Business Associate to comply with the requirements of HIPAA and ARRA, including the Privacy Rule, the Security Rule, and the HITECH Act. If any applicable law and/or the regulations promulgated under HIPAA or ARRA are amended, or interpreted by governmental authorities, in a manner that renders this Agreement inconsistent therewith, the Parties shall amend this Agreement to the extent necessary to comply with such amendments or interpretations. Notwithstanding the foregoing, if Covered Entity and Business Associate have not amended this Agreement to address a law or final regulation that becomes effective after the Effective Date and that is applicable to this Agreement, then upon the

effective date of such law or regulation (or any portion thereof) this Agreement shall be amended automatically and deemed to incorporate such new or revised provisions as are necessary for this Agreement to be consistent with such law or regulation and for Covered Entity and Business Associate to be and remain in compliance with all applicable laws and regulations. Except as provided in this Section A.14.5., no amendment to this Agreement shall be effective unless it is in writing and signed on behalf of Covered Entity and Business Associate.

**A.14.6. Entire Agreement.** This Agreement constitutes the complete agreement between Business Associate and Covered Entity relating to the matters specified in this Agreement, and supersedes all prior representations or agreements, whether oral or written, with respect to such matters. In the event of any conflict between the terms of this Agreement and the terms of the Business Arrangements or any such later agreement(s), the terms of this Agreement shall control unless the terms of such Business Arrangements are more strict with respect to PHI and comply with the Privacy Standards and/or Security Standards, or the Parties specifically otherwise agree in writing. No oral modification or waiver of any of the provisions of this Agreement shall be binding on either Party. No obligation on either Party to enter into any transaction is to be implied from the execution or delivery of this Agreement. This Agreement is for the benefit of, and shall be binding upon the Parties, their affiliates and respective successors and assigns. No third party shall be considered a third-party beneficiary under this Agreement, nor shall any third party have any rights as a result of this Agreement.

**A.14.7. Governing Law.** This Agreement shall be governed by and interpreted in accordance with the laws of the state of Montana, excluding its conflicts of laws provisions. Jurisdiction and Venue for any dispute relating to this Agreement shall exclusively rest with the state and federal courts in Lewis and Clark County, Montana.

**A.14.8. Equitable Relief.** Business Associate understands and acknowledges that any disclosure or misappropriation of any PHI in violation of this Agreement will cause Covered Entity irreparable harm, the amount of which may be difficult to ascertain, and therefore agrees that Covered Entity shall have the right to apply to a court of competent jurisdiction for specific performance and/or an order restraining and enjoining any such further disclosure or breach and for such other relief as Covered Entity shall deem appropriate. Such right of Covered Entity is to be in addition to the remedies otherwise available to Covered Entity at law or in equity. Business Associate expressly waives the defense that a remedy in damages will be adequate and further waives any requirement in an action for specific performance or injunction for the posting of a bond by Covered Entity.

**A.14.9. Nature of Agreement.** Nothing in this Agreement shall be construed to create (i) a partnership, joint venture, or other joint business relationship between the Parties or any of their affiliates, or (ii) a relationship of employer and employee between the Parties. Business Associate is an independent contractor, not an agent, to Covered Entity and nothing contained herein shall be intended to expand the scope or nature of the relationship. This Agreement does not express or imply any commitment to purchase or sell goods or services.

**A.14.10. Counterparts.** This Agreement may be executed in one or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same document. In making proof of this Agreement, it shall not be necessary to produce or account for more than one such counterpart executed by the Party against whom enforcement of this Agreement is sought.

- A.15. **Overseas Data and Cloud Computing.** Business Associate agrees not to create, receive, maintain, transmit, use, disclose, access, store, or otherwise outsource PHI physically outside of the United States of America. Business Associate agrees not to use cloud computing models, without executing with the cloud vendor a HIPAA-compliant Business Associate Agreement/Addendum containing substantially the same terms as this Agreement.

## **Exhibit B - Contractor Obligations**

### **B.1 Contractor Obligations**

In clarification and continuation of Contractor's response to RFP# COR-RFP-2020-0259N dated July 4, 2020, subject to terms and conditions of this Contract, Contractor shall provide the following Services during the Term.

#### **B.1.1. Support Services**

Contractor will maintain a 24/7/365 Service Desk which includes staffing by Contractor employees with the required expertise to provide support for the System and associated deliverables as outlined herein. Service Desk services shall include, but not be limited to:

- i) Assistance with Application function questions.
- ii) Assistance in diagnosing and determining the cause(s) of and resolving System Malfunctions.
- iii) Assistance with report generation questions.
- iv) Assistance in testing Application Updates supplied by Contractor.
- v) Assistance using any hosted production or non-production environments provided by Contractor.

The term "assist" (or "assistance"), when used to describe Service Desk services, means help that Contractor will provide, including, without limitation, troubleshooting, providing advice, answering questions, providing diagnosis, and sharing information.

##### **B.1.1.1. Service Level Agreement**

Contractor's Service Desk Services will be provided in accordance with the following Service Level Agreement (SLA) defined herein and in modification of RFP Section IV – Technical Requirements, Item 10 – Performance.

In response to a Problem Report related to the System, Contractor shall correct a reported Malfunction or provide a reasonable workaround sufficient to substantially mitigate the adverse effects of the problem on the normal use of the System. State agrees to reasonably assist Contractor in its efforts to diagnose the problem and correct a Malfunction by making available information, documentation, access to personnel, and testing reasonably requested by Contractor from time to time to assist Contractor in identifying and correcting the problem. From time to time at its discretion, Contractor also may (i) implement new releases of the System that contain changes, updates, patches, and fixes, and (ii) deliver to State new releases of the client Application Software that contain changes, updates, patches, and fixes. State's requests for support services shall be submitted by telephone (Critical Issues) or Internet via the Customer Portal at such numbers and web addresses Contractor shall provide to State from time to time.

Priority is the level of importance, as determined by MDOC, for a ticket as defined by the following:

Issue Priority	IMPACT			
URGENCY	All Users at all Locations	All Users at Single Location	Multiple Users	Single User
A System error or defect which directly impacts patient care. The Application cannot be used. No workaround, bypass or alternative is available.	Critical – Severity 1	Critical – Severity 1	Critical – Severity 1	Medium – Severity 3
A System error or defect which directly impacts patient care. A critical portion of the Application cannot be used. No workaround, bypass or alternative is available.	Critical – Severity 1	Critical – Severity 1	High – Severity 2	Medium – Severity 3
A portion of the Application cannot be used; however, a workaround, bypass or alternative is available for the disabled functionality. A System error or defect has negatively and substantially impacted operations; however, the impact to patient care is manageable via the workaround.	High – Severity 2	Medium – Severity 3	Medium – Severity 3	Medium – Severity 3
There is a non-critical System error or defect. A reasonable workaround exists to address the affected portion of the Application. Operational impact is limited, and there is no risk to patient care.	Medium – Severity 3	Low – Severity 4	Low – Severity 4	Low – Severity 4

In the event an issue exists due to an error in the Documentation, Contractor may correct such issue by providing corrected Documentation; provided, however, that no revision, modification,

or update to Documentation shall eliminate or materially diminish any operational functionality of the Application previously described therein. All Documentation issues shall fall within a Medium – Severity 3 Priority Level.

Response requirements for each priority level are defined below:

<b>Issue Priority</b>	<b>Notification, Acknowledgement or Resolution Level Requirement</b>	<b>Non-Compliance Measurement Period</b>	<b>Penalty</b>
<b>Critical – Severity 1</b>	Acknowledge or Notify within 30 minutes, Working to resolve within 2 hours, provide Resolution within 24 Hours (24/7/365)	Each 24-Hour period beyond the Resolution Requirement.	\$1,000 for each period of non-compliance.
<b>High – Severity 2</b>	Acknowledge or Notify within 60 minutes, Working to resolve within 4 hours, Resolution within 36 Hours (24/7/365)	Each 36-Hour period beyond the Resolution Requirement.	\$500 for each period of non-compliance
<b>Medium – Severity 3</b>	Acknowledge and working to resolve within five (5) Business Days, Resolution within next scheduled software release	Each software release beyond the Resolution Requirement.	\$500 for each period of non-compliance
<b>Low – Severity 4</b>	Acknowledge and working to resolve within fifteen (15) Business Days. Resolution within next two (2) scheduled software releases.	Each software release beyond the Resolution Requirement.	\$500 for each period of non-compliance

The above SLA and associated Penalties pertain only to those Services or portions of services provided directly by Contractor and within the direct control of Contractor.

The Non-Compliance Measurement Period and associated Penalties pertain only to Contractor's delivery of an acceptable Resolution to State and do not include time required by State for deployment of such Resolution, if applicable.

Should Contractor fail to meet the Resolution Level Requirements, associated penalties will be enforced as a credit to Service Fees reflected within the next invoice period. Total penalty fees within a 30-day period shall not exceed 50% of the associated service fees during that same period.

#### B.1.1.2. Support Escalation Process

<b>Tier</b>	<b>Responsibilities</b>
<b>Tier 0 - Super Users (State)</b>	<ul style="list-style-type: none"> <li>At each Licensed Site, State will identify "Super Users" who will be trained to have a good overall working knowledge of the System. The Super Users will assist local Authorized Users with general Application problems. and will be able to generally distinguish between hardware, operating system, network, and application errors. If Tier 0 support is unable to resolve the problem, it will be referred to the Tier 1 Service Desk.</li> </ul>

Tier 1 - Service Desk (Contractor)	<ul style="list-style-type: none"> <li>Responsibilities include but are not limited to:             <ul style="list-style-type: none"> <li>Resolving service tickets involving system access problems, passwords, System downtime, and Malfunctions directly related to the Application.</li> <li>Provide assistance in use of the Application and any related System component.</li> <li>Refer unresolved problems to Contractor's Tier 2 Service Desk if related to Contractor's System or Services.</li> </ul> </li> </ul>
Tier 2 – Service Desk (Contractor)	<ul style="list-style-type: none"> <li>Functioning as an escalation point for unresolved Tier 1 problems. Responsibilities include but are not limited to:             <ul style="list-style-type: none"> <li>Troubleshoot problems related to Contractor provided System or Services.</li> <li>Troubleshoot all database integrity and performance problems.</li> <li>Routine maintenance, deployment of Updates.</li> <li>Resolve operational problems with Production deployment.</li> <li>Coordinate problem resolution with all third-party vendors (e.g., suppliers of Third-Party Products, vendors supporting interfaces applications/systems).</li> <li>Refer unresolved problems to Contractor Tier 3 Service Desk.</li> </ul> </li> </ul>
Tier 3 – Service Desk (Contractor)	<ul style="list-style-type: none"> <li>Functioning as a final escalation point for unresolved Tier 2 problems. Responsibilities include but are not limited to:             <ul style="list-style-type: none"> <li>Provide "24/7/365" support to diagnose and resolve System Malfunctions.</li> <li>Resolve problems with Contractor provided System or Services including all core functionality, interfaces and other middleware.</li> <li>Resolve problems with any third-party software which has been imbedded or integrated with the Application.</li> </ul> </li> </ul>

### B.1.2. Software Updates

Contractor shall provide Updates to State as and when they become generally available, at no additional charge (including retrofit of all prior configurations, enhancements and Feature Requests). Contractor agrees to deploy any such Update into the Test environment within ten (10) days of release of the Update, unless otherwise directed by State. Upon successful testing of the new Update, State will provide notice of acceptance to Contractor, and the parties will mutually agree on a scheduled date for the migration of the Update to the Production environment.

For Updates to client (workstation) Application Software, Contractor shall provide all Updates through the secure TechCare File Portal. Application Update files will be appropriately named with version and date identifiers along with appropriate technical documentation. State will be responsible for the retrieval and execution of Application Updates for the workstation environments based on the files and documentation provided. State will provide written notification to Contractor when installing workstation versions of the Application.

### B.1.3. Post Go-Live Software Enhancements

Following Final System Acceptance, State may, in its discretion, request that Contractor develop certain enhancements to the System desired by the State. Contractor agrees to develop and install such State-requested enhancements as technically and clinically viable.

The following categorization of change requests are included in the cost of Operations: Configuration Changes using TechCare's Site Configuration Tool, Documentation Form/Template Changes, and Report Changes. For change requests which require updates to software application code, the rates defined in Section 4.1.3 shall be imposed. All change requests will follow the below process.

- B.1.3.1. Requests will be submitted to Contractor by State via the TechCare Customer Portal along with detailed business and functionality requirements.
- B.1.3.2. Contractor will review and estimate the work effort required to implement the feature and notify the State accordingly.
- B.1.3.3. State designee shall allow implementation (approve) or deny implementation of each enhancement and will provide the priority of each approved enhancement.
- B.1.3.4. Contractor shall commence work on all approved enhancements and shall provide updated information on a recurring basis including the status, the hours worked to date and the estimated completion date.
- B.1.3.5. Contractor shall include the enhancement in a future version of the Application for State testing and acceptance.
- B.1.3.6. Upon successful testing of the new Update (and completion of any required regression testing), State will provide notice of acceptance to Contractor, and the parties will mutually agree on a scheduled date for the migration of the Update to the Production environment per Section B.1.2.

#### **B.1.4. Server Hosting Infrastructure**

Contractor will provide and maintain a secure data center environment in order to remotely host the Application. Contractor will provide and maintain all necessary network infrastructure, computer hardware, data storage, third-party software (such as database software), technology, operating systems, and remote access software needed to remotely host the Application and the State Data in compliance with the performance standards set forth herein. Contractor will provide timely and effective maintenance and servicing of the utility infrastructure (e.g., electrical, UPS, HVAC, and fire suppression systems), computer room, network infrastructure (e.g., routers, switches), and computer room infrastructure (e.g., racks, cabling) to ensure maximum availability and sub-second network response time performance in support of Contractor's response time goals. Additionally, Contractor will (i) monitor the utility infrastructure, computer room, network infrastructure, computer room infrastructure; (ii) provide backup and restoration services for the Application, required third-party software and State Data, including offsite storage of backup media; (iii) coordinate preventative maintenance; and (iv) provide system management services including database maintenance (including database upgrade services), data archiving, system troubleshooting, production change control, and scheduled operational tasks. Additionally, Contractor shall be responsible for maintaining appropriate security measures, systems, and procedures for the Contractor data center and the computer systems therein, including, but not limited to, physical security, installation and maintenance of network firewalls, and installation and maintenance of virus protection software, all designed to protect against anticipated threats or hazards to the availability, security or integrity of the State Data.

- B.1.4.1. Contractor will provide a System development environment ("Dev") in order to support the implementation including (i) Dev Application environment, (ii) Dev database services and storage, (iii) Dev file storage, and (iv) Dev interface services within Contractor's infrastructure environment.

B.1.4.2. Contractor will provide a System test environment (“Test”) in order to support the ongoing productive use, including (i) Test Application environment, (ii) Test database services and storage, (iii) Test file storage, (iv) Test interface services.

B.1.4.3. Contractor will provide a System production environment (“Production”) in order to support the Go-Live (activation) and ongoing productive use, including (i) Production Application environment, (ii) Production database services and storage, (iii) Production file storage, (iv) Production interface services. The Production environment shall comply with the Service Level Agreement set forth in Section B.1.1.1.

B.1.5. Network Infrastructure

Contractor will provide Network Connectivity Services to support the connectivity of State to hosted Server Infrastructure as follows:

B.1.5.1. External Hosting Network – Network communication between Contractor’s datacenters and State’s WAN network which may be provided by Private VPLS or Private Point to Point connection.

B.1.5.2. Static VPN over Internet – Network communication between Contractor’s datacenters and State’s WAN network via VPN in which Internet is provided at Contractor datacenters by Contractor and Internet is provided at State’s Licensed Sites by State.

## **Exhibit C - State Obligations**

### **C.1. State Obligations**

In clarification of State's RFP# COR-RFP-2020-0259N, subject to terms and conditions of this Contract and provided Contractor is not in material breach of its obligations hereunder, State shall provide the following Services during the Term:

#### **C.1.1. Go-Live**

At such time as all Deliverables required by the Project Plan for Go-Live are delivered to State, and Contractor determines that the System and Services are completed, installed and operational, then Contractor shall provide State with written notice that the System is ready for Go-Live. Upon receipt of such notice, State will perform Pre-Live Acceptance in order to verify that (i) all required Deliverables have been delivered and accepted (ii) all reported material Malfunctions identified during Acceptance testing have been corrected or otherwise resolved and (iii) the System and Services are completed, installed and operational. Upon successful completion of Pre-Live Acceptance, State shall provide written confirmation to Contractor of the Go-live start date two (2) weeks in advance of the date. Should State change go-live date within two (2) weeks preceding start date, State shall be solely responsible for all non-refundable costs incurred by Contractor related to go-live activities. Such activities include but are not limited to: hotel accommodations, transportation costs, and personnel back-fill costs related to those individuals involved in the go-live training and implementation activities provided by Contractor. Go-live start date shall not occur within seven (7) days of a national holiday.

#### **C.1.2. Data Migration**

Contractor's ability to migrate the Patient information is based on the availability of current sources (paper, electronic, etc.) and Contractor's ability to access that information. It is State's responsibility to ensure reasonable access to the information in support of the Data Migration service.

#### **C.1.3. Facilities and Access**

State shall provide sufficient access and facilities and/or working space within a facility for Contractor to complete its obligations pursuant to the terms of the Contract.

#### **C.1.4. Human Resources**

State shall provide access to sufficient Subject Matter Experts (SMEs) whose knowledge of existing and future workflows will drive the customization of the Application to fit State's environment.

#### **C.1.5. Security and Authentication**

State shall assign a user ID and password to each Authorized User. State shall maintain or cause to be maintained the confidentiality of all such user IDs and passwords, including implementing and enforcing such policies and procedures as State deems appropriate thereto and State shall maintain adequate technical, physical, and procedural access controls and system security requirements and devices to ensure that access to the System by or through State is limited to duly authorized persons. State shall be solely responsible for all use or misuse of its user IDs, and Contractor shall have no obligation to monitor for or

report any use or attempted use of State's user IDs. All such user IDs and passwords are deemed to be Confidential Information of State, and State shall take reasonable steps to ensure that its personnel not share user IDs or passwords and not attempt to access the System except as duly authorized. Contractor shall not be liable to State for any loss or damage arising out of or relating to State's failure to maintain its obligations set forth in this Section.

#### **C.1.6. Conditions for Maintenance and Support Services**

Contractor's obligation to provide Maintenance and Support Services is conditioned upon (i) State's use of the Application in an information technology environment meeting the requirements set forth in the Documentation and (ii) State's having installed in accordance with Contractor's instructions the latest (i.e., most current) version of the Application; provided, however, that Contractor shall provide Maintenance and Support Services with respect to a prior version of an Application for at least three (3) months following delivery to State of an updated version of the Application. Contractor shall extend support of a prior version of the Application beyond three (3) months if State, through its testing, is unable to accept the updated version of the Application.

#### **C.1.7. Supporting Hardware, Software and Services**

State is responsible for providing and supporting software that may complement the System, but not be a part of it. Such supporting software includes, but is not limited to, the following:

- C.1.7.1. Office Productivity Software
- C.1.7.2. Dictation Software
- C.1.7.3. Clinical Reference Software
- C.1.7.4. Identity Management Services
- C.1.7.5. Operating System Patching
- C.1.7.6. Security of State Network, Infrastructure
- C.1.7.7. Computer Workstations (Desktop, Laptops, Tablets)
- C.1.7.8. Peripheral Printing and Scanning Devices
- C.1.7.9. Peripheral Signature Capture Devices
- C.1.7.10. Telemedicine Software

#### **C.1.8. Network Infrastructure**

State will provide Network Connectivity Services to support the connectivity of State endpoints to hosted Server Infrastructure as follows:

- C.1.8.1. State shall provide sufficient internal LAN network connectivity and WAN infrastructure for State's Licensed Sites. State LAN and WAN networks will support at least 0.12Mbps per concurrent session with <40ms latency.
- C.1.8.2. State will support the efforts of Contractor in providing connectivity between State's LAN and/or WAN infrastructure and Contractor's production infrastructure in order to provide hosted services.
- C.1.8.3. State will provide and support any network equipment which resides within State facilities which is required for implementation of connectivity.
- C.1.8.4. State shall provide access to the use of enterprise network management services including, but not limited to, Domain Name Services (DNS) and Shared/Network Printing Services in order for proper Application functionality.

C.1.8.5. State shall provide Contractor with a network/system account that maintains local administrative privileges on State owned server infrastructure that supports the application, if any.

C.1.8.6. State shall allow communication across the following ports within the before mentioned connections:

TCP 1433, 1434 – SQL

TCP 139, 445 - SMB Windows File Share

UDP 137, 138 - SMB Windows File Share

ICMP – Ping

TCP 53

UDP 53

Failure of the State to provide access methods or properly maintain those methods outlined above will result in Contractor being unable to provide certain Maintenance and Support Services as outlined in this Contract.